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No. 84-385

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

WALTER P. COONS,
Cross-Petitioner,

v.

HONDA MOTOR COMPANY, LTD.,
Cross-Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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BRIEF FOR CROSS-RESPONDENT HONDA MOTOR CO., LTD. IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the Supreme Court of New Jersey properly held that the New Jersey tolling statute unconstitutionally burdens interstate commerce by conditioning a foreign corporation's assertion of that State's statutes of limitation on submitting to New Jersey's licensing scheme.

PARTIES BELOW

The list of all parties to the proceeding in the court below is fully set forth at page ii of the petition for a writ of certiorari filed by Honda Motor Co., Ltd. on September 11, 1984.

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF QUESTION PRESENTED	i
PARTIES BELOW	i
TABLE OF AUTHORITIES	iv
COUNTERSTATEMENT	1
SUMMARY OF ARGUMENT	2
ARGUMENT	
There Is No Substantial Question Presented Because the Court Below Correctly Applied This Court's Well-Settled Commerce Clause Principles in a Manner That Cross-Petitioner Concedes Creates No Conflict with Decisions of This Court, Lower Federal Courts, or Other State Courts	3
A. The Lower Court's Holding	3
B. Cross-Petitioner's Question Presents No Conflict	4
C. The Settled Law	6
D. The Lower Court Properly Applied Settled Law	7
E. The Inapplicability Here of Equal Protection Analysis	9
F. The Irrelevance of the New Legislation	11
CONCLUSION	14

TABLE OF AUTHORITIES

Cases: Page

Allenberg Cotton Co. v. *Pittmann*, 429 U.S. 20 (1974) 4, 6, 7, 10, 13
Avdel Corp. v. *Mecure*, 58 N.J. 264, 277 A.2d 207 (1971) 10
Brown v. *Ohio*, 432 U.S. 161 (1967) 5
Buck Stove & Range Co. v. *Vickers*, 226 U.S. 205 (1912) 6
Coons v. *Honda Motor Co.*, 94 N.J. 307, 463 A.2d 921 (1983) 7, 8
Crutcher v. *Kentucky*, 141 U.S. 47 (1891) 6
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U.S. 282 (1921) 4, 6, 7
Day v. *Stokes*, 97 N.J. Eq. 378, 127 A. 331 (1925) .. 8
Eli Lilly & Co. v. *Sav-On Drugs, Inc.*, 366 U.S. 276 (1961) 6
G. D. Searle & Co. v. *Cohn*, 455 U.S. 404 (1982) 3, 7, 9
Garner v. *Louisiana*, 368 U.S. 157 (1961) 5
Garrity v. *New Jersey*, 386 U.S. 493 (1967) 6, 8
Grow Farms Corp. v. *National State Bank*, 167 N.J. Super. 102, 400 A.2d 535 (Law Div. 1979) .. 8
Guaranty Trust Co. v. *United States*, 304 U.S. 126 (1938) 9
Hudanich v. *Borough Council of Avalon*, 183 N.J. Super. 244, 433 A.2d 777 (Law Div. 1981) 11
International Text Book Co. v. *Pigg*, 217 U.S. 91 (1910) 6, 7, 13
Kassel v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981) 10
Litton Industrial Systems, Inc. v. *Kennedy Van Saun Corp.*, 117 N.J. Super. 52, 283 A.2d 551 (Law Div. 1971) 13
McLaughlin v. *Bassing*, 51 N.J. 410, 241 A.2d 450 (1968) 11
Neirbo Co. v. *Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939) 13
Pike v. *Bruce Church, Inc.*, 397 U.S. 137 (1970) 10, 11
Protective Finance Corp. v. *Glass*, 101 N.J.L. 85, 2 N.J. Misc. 818, 125 A. 879 (1924) 8

TABLE OF AUTHORITIES—Continued

	Page
Randolph Laboratories, Inc. v. *Specialities Dev. Corp.*, 62 F. Supp. 897 (D.N.J. 1945)	13
San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973)	9
Sioux Remedy Co. v. *Cope*, 235 U.S. 197 (1914)	4, 6
United States v. *Kubrick*, 444 U.S. 111 (1979)	8, 9
United States v. *Seckinger*, 397 U.S. 203 (1970)	5
Velmohos v. *Maren Engineering Corp.*, 83 N.J. 282, 416 A.2d 372 (1980)	10
Wood v. *Carpenter*, 101 U.S. 135 (1879)	8
Constitution, Statute and Rules:	
U.S. Const., art, I, § 8, cl. 3	*passim*
N.J. Stat. Ann. § 2A:14-22	*passim*
N.J. Ct. R. 4:2-2	2, 11
N.J. Ct. R. 4:4-1	11
N.J. Ct. R. 4:4-4	10, 11
N.J. Ct. R. 4:37-2	11
Other Authorities:	
Restatement (Second) of Conflict of Laws, § 44, Comment a (1971)	13
R. Stern & E. Gressman, *Supreme Court Practice* (5th ed. 1978)	10
L. Tribe, *American Constitutional Law* § 6-13 (1978)	6, 8
Wright, *Law of Federal Courts* § 60 (4th ed. 1983)	5

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BRIEF FOR CROSS-RESPONDENT HONDA MOTOR CO., LTD. IN OPPOSITION

Cross-respondent Honda Motor Co., Ltd. (Honda) respectfully requests that the cross-petition for writ of certiorari be denied.

COUNTERSTATEMENT

The cross-petition and its accompanying appendix include, and are replete with references to, documents not identified as being of record in this case. Rather than deal with each of the many liberties taken by the cross-petitioner in this regard, we simply note here that the relevant facts of record in this case are stated accurately and fully in the decisions of the Supreme Court of New Jersey for which review is sought herein. Pet. App. A (at 1a-27a) and B (at 28a-54a). We only wish to emphasize here that the Cross-Petition concedes that the New Jersey courts below have held that the cross-petitioner

"had sufficient facts available to him to discover the existence of his cause of action . . . within the two-year [statute of limitation period]," Cross Pet. at 9; that, under the New Jersey rules (N.J. Ct. R. 4:2-2), an action is "commenced," and the statute of limitations tolled, by filing a complaint, not by serving the defendant; and that, in any event, service upon Honda was effectuated by the cross-petitioner well within two years after his complaint was filed. Pet. App. at 66a. Accordingly, despite cross-petitioner's exaggerated complaints about the difficulty of serving Honda, the cross-petitioner could have easily brought his suit in a timely fashion. Finally, as the cross-petitioner also acknowledges, the grounds upon which the cross-petition is based were never adopted by the dissenting justices below. Cross Pet. at 13. Contrary to cross-petitioner's assertion, Cross Pet. at 13, however, the majority opinion below *did* address the issue now raised by the cross-petitioner and it summarily rejected the argument as being wholly without merit. Pet. App. B at 39a-40a.

SUMMARY OF ARGUMENT

The cross-petitioner seeks to have this Court carve out an exception from the age-old principles of its Commerce Clause jurisprudence based on a strained factual distinction which has been wrung from the record of this case. By the cross-petitioner's own admission, however, there is no supporting authority for the analysis he advances. See Cross Pet. at 13. Accordingly, the cross-petitioner is not able to show that the decision below is in conflict with any decision of this Court, of the lower federal courts, or of any state court. Moreover, the view of the law advanced by the cross-petitioner here was summarily rejected by the majority opinion below, and its lack of merit is evidenced in telling fashion by the fact that the cross-petitioner's analysis formed no basis, indeed, was not even mentioned in, the fifteen-page dissent below. As we show in detail (see pp. 3-10, *infra*) the question presented on its merits is far from worthy of this Court's further

consideration. We do, however, agree with petitioner that the New Jersey legislature's recent amendment of the statute at issue should in and of itself have no bearing on this Court's consideration of either the petition or cross-petition in this case. See pp. 11-14, *infra*.

ARGUMENT

There Is No Substantial Question Presented Because the Court Below Correctly Applied This Court's Well-Settled Commerce Clause Principles in a Manner That Cross-Petitioner Concedes Creates No Conflict with Decisions of This Court, Lower Federal Courts, or Other State Courts.

A. *The Lower Court's Holding.* Pursuant to a remand from this Court, 455 U.S. 996 (1982), the New Jersey Supreme Court struck down the New Jersey tolling statute at issue here on Commerce Clause grounds. In so doing, the lower court first responded to this Court's request that an ambiguity in the tolling statute be resolved. The lower court ruled that the New Jersey tolling statute requires that non-New Jersey corporations register to do business in New Jersey in order to gain the benefit of the state's statutes of limitation. Pet. App. 29a-30a.[1] After so construing the tolling statute, the New Jersey Supreme Court went on to hold that, under a long line of

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[1] In *G.D. Searle & Co.* v. *Cohn*, 455 U.S. 404 (1982), this Court, over the dissent of Justice Stevens, ruled that the New Jersey tolling statute did not violate the Equal Protection Clause. Nevertheless, this Court remanded *Searle*, and ultimately this case, for resolution of an ambiguity in the tolling statute, which, when resolved, would clarify the constitutionality of the tolling statute under the Commerce Clause. *Id.* at 412-14; 996. The specific ambiguity in the statute which caused this Court to remand in *Searle* and in this case was the question of what precisely a foreign corporation—*i.e.*, one not incorporated in the State—must do to be "represented in [New Jersey] by any person or officer upon whom summons or other original process may be served" within the meaning of the tolling statute.

decisions of this Court, the tolling statute constituted a "forced licensure" provision in violation of the Commerce Clause. In relevant part, the court's reasoning was as follows:

> [T]he Supreme Court has invalidated state statutes, * * * as *per se* violations of the Commerce Clause in the area of licensing requirements imposed on foreign corporations involved in interstate commerce. In a series of decisions the Supreme Court has held that a state cannot discriminate against a foreign corporation engaged in interstate commerce merely because it has failed to qualify to do business in that state. *See Allenberg Cotton Co.* v. *Pittman*, 419 U.S. 20 (1974); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282 (1921); *Sioux Remedy Co.* v. *Cope*, 235 U.S. 197 (1914).
>
> * * * The legislature * * * cannot, in effect, force licensure on foreign corporations dealing exclusively in interstate commerce by otherwise preventing them from gaining the benefit of the statute of limitations defense. The burden thus imposed on interstate commerce is unconstitutional. *Id.* at 38a-40a.

B. *Cross-Petitioner's Question Presents No Conflict.* When the atmosphere of the cross-petition are put to one side, the sole question it presents is whether the long line of this Court's authority relied upon by the New Jersey Supreme Court in the passage quoted above is apt in this case. The cross-petition distinguishes those Commerce Clause cases cited by the New Jersey Supreme Court on the grounds that each involved a denial by a state of the right to sue to foreign corporations; this case is different, cross-petitioner contends, because New Jersey's tolling statute does not interfere with a foreign corporation's right to sue, but, instead, precludes foreign corporations from raising New Jersey statutes of limitations. The cross-petitioner not only concedes that the dissent below did not rely upon this strained distinction to argue that the New Jersey statute satisfies the federal

Constitution, Cross Pet. at 13,[2] but the cross-petitioner further acknowledges that he has found *no* authority which attaches any significance to its analysis. *Id.* at 14. Accordingly, the cross-petitioner does not—and, indeed, he cannot—assert that the decision at issue is in conflict with any decisions of this Court or with any decisions of other state or federal courts. Manifestly, then, there is no important question of constitutional law at stake requiring review by this Court. In any event, we show below that when viewed against this Court's broad Commerce Clause rulings, cross-petitioner's attempt to attach significance to the factual distinction it draws is wholly without merit.

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[2] The dissent below premised its Commerce Clause analysis upon its own construction of the New Jersey tolling statute. Unlike the majority, it found that a non-New Jersey corporation did not have to register in New Jersey to gain the benefits of the statutes of limitations; instead, "all that is required . . . to obtain the general benefits of a statute of limitations [under New Jersey law] is that [the foreign corporation] appoint an agent for service of process." Pet. App. 41a. The dissent then concluded—in our view incorrectly (see n.6, *infra*)—that, because its reading of the statute imposed such a minimal licensing burden on a foreign corporation, there was no Commerce Clause violation.

Cross-petitioners cannot advance the position of the dissent here, because, as they recognize (Cross Pet. at 17 n.19), state "courts 'have final authority to interpret . . . State[] legislation,'" *Brown* v. *Ohio*, 432 U.S. 161, 167 (1977), quoting *Garner v. Louisiana*, 368 U.S. 157, 169 (1961), and this Court could only adopt the reasoning of the dissent if it disregarded the majority opinion's construction of the New Jersey tolling statute. Cross-petitioner feebly suggests (Cross Pet. at 17 n.9) that this Court may not be limited by a state supreme court's interpretation of its own law when federal constitutional issues are at stake. The cases cross-petitioner cites in support of this proposition, however, are wholly inapt. They involve cases where this Court has refused to follow a state court's construction of a contract to which the United States is a party on grounds that contracts of this nature are governed by federal, rather than state, common law. See, *e.g.*, *United States* v. *Seckinger*, 397 U.S. 203, 209 (1970); Wright, *Law of Federal Courts* § 60 at 396 & n.12 (4th ed. 1983).

C. *The Settled Law.* It is an age-old and fundamental axiom of Commerce Clause jurisprudence "that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce no matter how [meritorious] the pretext may be for imposing it." *Crutcher* v. *Kentucky*, 141 U.S. 47, 58 (1891). See also, *e.g.*, *Eli Lilly & Co.* v. *Sav-On Drugs, Inc.*, 366 U.S. 276, 278-79 (1961); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282, 291 (1921); *Sioux Remedy Co.* v. *Cope*, 235 U.S. 197 (1914); *International Textbook Co.* v. *Pigg*, 217 U.S. 91 (1910); L. Tribe, *American Constitutional Law* § 6-13 at p. 342 (1978).

Thus, a foreign corporation engaging exclusively in interstate commerce within a state has a right to be free of a state's licensing requirements. This Court, in turn, has concluded that this kind of right is "of a Constitutional stature whose exercise a State may not condition by the exaction of a price." *Garrity* v. *New Jersey*, 385 U.S. 493, 500 (1967). It has given effect to this doctrine by repeatedly invalidating state statutes which required foreign corporations engaged exclusively in interstate commerce to forego their right to sue in state courts as a condition of avoiding state licensing requirements. See, *e.g.*, *Allenberg Cotton Co.* v. *Pittman*, 419 U.S. 20 (1974) (invalidating statute making the receipt of a certificate of authority a condition to the right to sue in state court); *Dahnke-Walker Milling Co.* v. *Bondurant*, *supra* (invalidating statute making the receipt of a license and agreement that process can be served upon the secretary of state a condition to the right to sue); *Buck Stove & Range Co.* v. *Vickers*, 226 U.S. 205 (1912) (invalidating statute making the receipt of a license, agreement to designate the secretary of state for service of process, payment of a school tax, and the filing of a corporation charter a condition to the right to sue). In this regard, state statutes have been struck down even when court access has been conditioned on only minimal infringements

upon interstate commerce. See, *e.g.*, *International Textbook Co.* v. *Pigg*, *supra* (invalidating statute making the receipt of a $25.00 license and agreement that service could be effected on secretary of state a condition to the right to sue).

D. *The Lower Court Properly Applied Settled Law.* The cross petitioner's attempt to suggest some type of meaningful distinction for the purposes of Commerce Clause analysis between conditioning the free flow of interstate commerce on forsaking the right to sue and forsaking the right to assert what may be a dispositive limitations defense is unavailing. The majority in *Coons I*, following the analytical lead suggested to it by Justice Powell in *Searle*,[3] rejected this distinction because it could not be accommodated by the breadth of this Court's well-settled Commerce Clause rulings. For example, the *Coons I* majority noted that in

> striking down a Kentucky statute that prevented such a suit, the *Dahnke-Walker* Court held that
>
> > "[a] corporation of one state may go into another, without obtaining the leave or license of the latter, for all the legitimate purposes of such commerce; and any statute of the latter state which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause. [257 U.S. at 291.]" Pet. App. at 39a.

Accordingly, the court reasoned that in the Commerce Clause cases relevant to the question at hand, this Court has "spoke[n] in broad terms, *declining to limit decision*

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[3] Justice Powell, joined by Chief Justice Burger, dissented to the remand in *Searle* on the grounds that the New Jersey tolling statute was not at all ambiguous and clearly required that foreign corporations register to do business in New Jersey to obtain state statutes of limitations. 455 U.S. at 415-19. Justice Powell went on to note that the Commerce Clause challenge to the tolling statute had "considerable force," citing *Allenberg Cotton Co.* v. *Pittman*, 419 U.S. 20 (1974. 455 U.S. at 419-20.

to the 'right to sue' context." Id. (emphasis added). The *Coons I* court further observed that this Court has "focused on the importance of leaving interstate commerce unfettered." *Id.*

Again, this Court has made it clear that "rights of a Constitutional stature," such as "[e]ngaging in interstate commerce," "may not [be] condition[ed] by the exaction of a price." *Garrity* v. *New Jersey, supra*, 385 U.S. at 500. See also, *e.g.*, L. Tribe, *supra*, § 6-13, at 342-343 & n.5. Thus, it was not the lower court's burden to demonstrate that the price of foregoing the right to assert a limitations defense is as high as the price of foregoing the right to sue—although we believe it clearly is as high.[4] The only question is whether foregoing the protection of the statute of limitations is "the exaction of a price" at all. This Court, in *United States* v. *Kubrick*, 444 U.S. 111, 117 (1979), made quite clear that it is, when it said:

> Statutes of limitation, which "are found and approved in all systems of enlightened jurisprudence," *Wood* v. *Carpenter*, 101 U.S. 135, 139 (1879), represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail

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[4] Indeed, a foreign corporation can immediately overcome the bar to its right to sue upon existing claims by submitting itself to the state's licensing system. See *e.g.*, *Grow Farms Corp.* v. *National State Bank*, 167 N.J. Super. 102, 400 A.2d 535 (1979) (foreign corporation allowed to obtain certificate during pendency of action, if necessary, in order to avoid motion to dismiss); *Day* v. *Stokes*, 97 N.J. Eq. 378, 127 A.2d 331 (1925) (certificated foreign corporation may sue on contract executed before certification); *Protective Finance Corp.* v. *Glass*, 100 N.J.L. 85, 2 N.J. Misc. 818, 125 A. 879 (1924) (same). But licensing will *not* automatically entitle a foreign corporation to assert a limitations defense as to pending claims. Instead, as the terms of the tolling make plain, licensing will only commence the *running* of the limitations statute—clearly a "price" which exceeds that found in "the right to sue" context.

> over the right to prosecute them." * * * We should regard the plea of limitations as a "meritorious defense, in itself serving a public interest." *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 136 (1938).

E. *The Inapplicability Here of Equal Protection Analysis.* Cross-petitioner's reliance on a series of equal protection and due process cases holding that statutes of limitations do not constitute a "fundamental right" of a litigant does not in any way affect the foregoing analysis. As *Searle* itself demonstrates, the question of whether there is a fundamental right to a statute of limitations is *only* relevant to Equal Protection analysis, because if there were a fundamental right to statutes of limitation, the Court would have had to review the classification under heightened scrutiny. 455 U.S. at 408. See also, *e.g.*, *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 17 (1973) (heightened scrutiny required when state statute "operates to disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution"). In Commerce Clause analysis, in contrast, the important issue is the discrimination against or burden on interstate commerce —not whether any fundamental right is involved. This distinction between Equal Protection and Commerce Clause analysis is implicit in this Court's remand in *Searle*, since this Court remanded *Searle* to determine if the statute violated the Commerce Clause, even after ruling that the statute did not violate Equal Protection. 455 U.S. at 412-14. Indeed, cross-petitioner acknowledges that "[the fact] that a state statute passes constitutional muster on equal protection and due process grounds does not prevent it from being declared invalid under Commerce Clause standards." Cross Pet. at 17. As we have shown (see pp. 6-8, *supra*), under the Commerce Clause analysis relevant here, the question is only whether the free exercise of interstate commerce is "condition[ed] by the exaction of a price." And, as *United States* v. *Kubrick*, *supra*, 444 U.S. at 117, makes clear, requiring a foreign

corporation to forego statute of limitations defenses as a condition of engaging in interstate commerce free of state regulations *is* an "exaction of a price," see pp. 8-9, *supra*, even if it may not be the abrogation of a fundamental right.

In sum, "the decision below merely applies principles previously approved by the Supreme Court, and applies them correctly," R. Stern & E. Gressman, *Supreme Court Practice* 315 (5th ed., 1978), and in such a circumstances, certiorari is traditionally denied by this Court. *Id.*[5]

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[5] The *Allenberg*-line of cases, upon which the majority in *Coons I* relied and which Justice Powell, joined by Chief Justice Burger, cited in *Searle*, see n.3, *supra*, apply a virtual *per se* rule of invalidity to state statutory schemes which impose licensing requirements on foreign corporations engaged only in interstate commerce. These cases are to be distinguished from other Commerce Clause decisions of this Court which do not involve classic, discriminatory "forced licensure" formats, and which therefore apply a balancing test to determine if there is a Commerce Clause violation, *i.e.*, that a state law which regulates "even-handedly" but which imposes "indirect" or "incidental" burdens on interstate commerce is invalid if "the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefit." *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Accord, *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662, 670-71 (1981). But even if the "balancing" test of *Pike* were applied here, the New Jersey statute at issue would still be invalid. As we have shown, the burdens imposed by the tolling statute on interstate commerce are substantial, while the local benefit which was initially to be derived from that statute is now being fulfilled by other means.

The original purpose in enacting the tolling provision at issue was to prevent statutes of limitation from applying in actions in which foreign corporations could not be served because of the then-existing restrictions on the extraterritorial reach of New Jersey's service of process rules. See, *e.g.*, *Velmohos* v. *Maren Engineering Corp.*, 416 A.2d 372, 376-77 (N.J. 1980). Those restrictions have now been largely, if not completely, removed. N.J. Ct. R. 4:4-4(c) & (e). See *Avdel Corp.* v. *Mecure*, 277 A.2d 207, 209 (1971) (long-arm rule in New Jersey reaches to limit of due process). To the extent that New Jersey plaintiffs still have any difficulties in effectuating service on foreign corporations, the New Jersey rules

F. *The Irrelevance of the New Legislation.* Finally, there is one point on which we agree with the cross-petitioner, *i.e.*, that the New Jersey legislature's recent amendment of the New Jersey tolling statute in and of itself should have no bearing on this Court's consideration of either the petition or the cross-petition. See Cross Pet. at 6-7. The new tolling statute deletes the requirement that a foreign corporation must register to do business in New Jersey to gain the benefit of the New Jersey statutes of limitation. Instead, a foreign corporation must now "file[] with the Secretary of State a notice designating a representative to accept service of process." Cross App. at 1a. A filing of this nature merely terminates the tolling of the applicable statute of limitations, and that statute of limitations therefore only begins to run against the foreign corporation on the date of that filing. *Id.*; see also n.6, *supra*. The new legislation became effective upon its date of enactment, August 23, 1984, *id.*

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provide a sensible solution for this problem. Under N.J. Ct. R. 4:2-2, a civil action is commenced (and the statute of limitations tolled) by filing a complaint, not by service on a defendant. A plaintiff may therefore protect himself against a limitations bar by filing a complaint, even if he anticipates difficulty in serving the defendant. And, while N.J. Ct. R. 4:4-1 appears to require that service be made within ten days of filing a complaint, dismissal of a suit for failure to comply with this rule is within the "sound discretion" of the court. *McLaughlin* v. *Bassing*, 51 N.J. 410, 241 A.2d 450 (1968) (adopting dissenting opinion in the Appellate Division, 100 N.J. Super. 67, 241 A.2d 237 (App. Div. 1967)); *Hudanich* v. *Borough Council of Avalon*, 183 N.J. Super. 244, 433 A.2d 777 (Law Div. 1981); N.J. Ct. R. 4:37-2(a) (incorporated into N.J. Ct. R. 4:4-1). Thus, a complaint will not be dismissed for late service if a plaintiff has had legitimate difficulty serving a foreign corporation. Even if any problems remain, they could readily be addressed by amendment to the New Jersey rules which would ensure that a complaint will not be dismissed in cases where a New Jersey plaintiff has legitimate difficulties in serving a defendant. In sum, under the *Pike* analysis, "the nature of the local interest" to be protected by the statute could easily "be promoted, [if it is not already being promoted,] with a lesser impact on interstate activities."

Thus, even had a foreign corporation filed the appropriate notice with the New Jersey Secretary of State on August 23, 1984, it would have available to it a statute of limitations defense only in those New Jersey personal injury actions *filed on or after August 23, 1986*, and only in those New Jersey actions for property damage or breach of contract *filed on or after August 23, 1990*.

Because the New Jersey Supreme Court's ruling declaring the prior tolling statute unconstitutional was applied by that court wholly prospectively so that "the statute of limitations as to foreign, unrepresented corporations commences to run as of [August 3, 1983]," Pet. App. at 19a, there are now hundreds of otherwise untimely cases pending in both New Jersey state and federal district courts which could never have been brought if the New Jersey Supreme Court was correct in its constitutional invalidation of the prior tolling statute and, if, as we argue in our own September 11, 1984 petition, the decision on the constitutionality of the tolling statute should be applied retroactively. Honda Pet. at 5 & n.4. Indeed, because of the lower court's prospectivity ruling, there will doubtless be hundreds of additional otherwise untimely cases filed before the new tolling statute allows foreign corporations to raise a statute of limitation defense, which, in the case of a breach of contract action, could not be before August 23, 1990.

Therefore, any substantial federal questions pertaining to the New Jersey tolling statute at issue here will have great significance to the administration of justice within the New Jersey state and federal courts for years to come. Moreover, the questions raised in Honda's petition have *general* constitutional significance in that they address the manner in which state courts should handle the retroactivity of federal constitutional decisions. Finally, as cross-petitioner acknowledges, Cross Pet. at 7, the new tolling statute itself raises substantial Commerce Clause issues, and, thus, for this reason as well, the statute can-

not be viewed as in any way resolving or diminishing the importance of any substantial federal questions raised herein.[6]

Our only difference with cross-petitioner on this issue is that, while the new tolling statute should not interfere with this Court's consideration of substantial federal questions raised herein, we do not in the first instance view cross-petitioner's issues as being worthy of this Court's further review, whereas we do view the

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[6] The New Jersey legislature, in amending the tolling statute, has apparently adopted the position of the dissenters in *Coons I*, *i.e.*, that by changing the name of the requirements imposed on foreign corporations by the tolling statute, the Commerce Clause problem is avoided. The point, however, is that the *Allenberg-Cotton* line of cases discussed above did not turn on whether or not a state requirement was deemed "registration." Indeed, in one of those cases, *International Textbook* v. *Pigg*, 217 U.S. 91, 110-11 (1910), the Court acknowledged that the requirements imposed by Kansas on foreign corporations (filing a statement giving information about the corporation with the Kansas Secretary of State, *id.* at 102-03) did not technically include procuring a "license" to do business in the State. Still the Court struck down the state law because the "effect" of the filing requirement "[was] practically the same as if a formal license was required as a condition precedent to the right to do . . . business [in Kansas]." Rather than implying anything magical about a"registration" requirement, then, the *Allenberg Cotton*-line of cases stands for the principle that a state may not condition certain privileges on compliance by a foreign corporation with state requirements such as designation of an agent. In addition, the burden imposed on foreign corporations by the new statute may be substantial. Designation of an agent in the manner required could make New Jersey a forum in which the foreign corporation might readily be sued by non-New Jersey plaintiffs—perhaps even on causes of action not arising out of the corporation's New Jersey contacts. *E.g.*, *Randolph Laboratories, Inc.* v. *Specialities Development Corp.*, 62 F. Supp. 897, 898-99 (D.N.J. 1945); *Litton Industrial Systems, Inc.* v. *Kennedy Van Saun Corp.*, 117 N.J. Super. 52, 60-62, 283 A.2d 551, 555-56 (Law Div. 1971). *See generally Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 175 (1939); *Restatement (Second) of Conflict of Laws* § 44 & Comment a (1971).

issues presented in our petition as being ripe for this Court's consideration.

CONCLUSION

For the foregoing reasons, the cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

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